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IN THE COURT OF APPEALS OF INDIANA

LARRY D. CAMERON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 45A03-0606-CR-243
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Salvador Vasquez, Judge
Cause No. 45G01-0502-FA-4

April 9, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

SHARPNACK, Judge

Larry Cameron appeals his sentence for two counts of child molesting as class A felonies[1] and one count of child molesting as a class C felony.[2] Cameron raises one issue, which we revise and restate as:

I. Whether Cameron's sentence violates Blakely v. Washington, 542 U.S. 296, 124 S. Ct. 2531 (2004), reh'g denied;

II. Whether the trial court abused its discretion in sentencing Cameron; and

III. Whether Cameron's sentence is inappropriate in light of the nature of the offense and the character of the offender.

We affirm.

The relevant facts follow. D.A. was born on November 30, 1992. De Nese Anderson, D.A.'s mother, met Cameron in March 1997. Anderson and Cameron began living together in July 1998 and were married in May 1999. On several occasions when D.A. was between the ages of five and seven, Cameron rubbed her vagina and asked her how that felt. Cameron told D.A. not to tell anyone because he would be in trouble and go to jail.

The family moved to a different apartment, and Cameron continued to touch D.A.'s vagina and began having sexual intercourse with D.A. While living at this

[1] Ind. Code § 35-42-4-3 (2004).

[2] Id.

apartment, Cameron engaged in sexual intercourse with D.A. "over 30 times." Transcript at 184. Cameron continued to ask D.A. how it felt and told D.A. not to tell anyone.

The family moved to Carey Street when D.A. was about eight or nine years old, and Cameron began having sexual intercourse with D.A. in a more aggressive manner. Cameron also engaged in anal intercourse with D.A. on one occasion at that location. Cameron continued to ask D.A., "How does it feel?" Id. at 189.

The sexual activities continued when the family moved to a different address on Carey Street. Cameron told D.A. that if her mother found out, they would lose the house, her mother would have a heart attack and die, and D.A. would be homeless. Cameron forced D.A. to have sex in the attic, her mother's room, the den, the basement, and the garage. On two occasions, Cameron had anal intercourse with D.A. in the attic. During one of these incidents, Anderson called on the telephone. Cameron talked to Anderson on the telephone and put a pillow over D.A.'s head as she tried to scream. When D.A. wanted to go and ride her bike, she would ask Cameron to get her bike down from a hook in the garage, and Cameron would force her to have sex on one of his cars first. Cameron had sex with D.A. "many" times at this address. Id. at 193.

D.A. started her period on February 14, 2004. Between July and August 2004, D.A. became pregnant. At some point, D.A. told Cameron that she was pregnant. Cameron told D.A. that he could probably take her to get an abortion. On January 27, 2004, Anderson took D.A. to see Dr. Kimberly Arthur, a gynecologist, because D.A. had missed so many months of her period. Dr. Arthur discovered that D.A. was pregnant.

When Dr. Arthur told D.A. that she was pregnant, D.A. told Dr. Arthur that Cameron was the father. The East Chicago Police went to Dr. Arthur's office and talked with D.A. The police followed Anderson and D.A. home, and Cameron arrived home at the same time and tried to run but was apprehended by police. On February 7, 2005, D.A.'s water broke, and she was in excruciating pain. Hours later, D.A. gave birth to a stillborn child. DNA samples were taken from Cameron, D.A., and the stillborn child. DNA testing indicated a 99.9% probability that Cameron was the father of the stillborn child.

The State charged Cameron with child molesting as a class A felony and child molesting as a class C felony. The State later amended the information by charging Cameron with two counts of child molesting as class A felonies and one count of child molesting as a class C felony. After a trial, the jury found Cameron guilty as charged.

The trial court found the following aggravating circumstances: (1) Cameron violated a position of trust; and (2) Cameron had his bail reversed because his continuing contact with D.A. and perceived threats to D.A. resulted in an additional charge. The trial court found that "[i]mprisonment of [Cameron] will result in undue hardship to himself" due to some health issues[3] as a mitigator. Appellant's Appendix at 94. The trial court sentenced Cameron to thirty-five years on each of the class A convictions and five years on the class C conviction. The trial court ordered that the sentences be served

[3] Cameron's attorney stated that Cameron suffers from "Chrohn's [sic] disease" and depression. Transcript at 619.

consecutive to each other for a total sentence of seventy-five years in the Indiana Department of Correction.

I.

The first issue is whether Cameron's sentence violates Blakely v. Washington, 542 U.S. 296, 124 S. Ct. 2531 (2004), reh'g denied. On June 24, 2004, the United States Supreme Court decided Blakely, which held that, other than the fact of a prior conviction, facts supporting an enhanced sentence must be admitted by the defendant or found by a jury. Blakely, 542 U.S. at 303-304, 124 S. Ct. at 2537; Cotto v. State, 829 N.E.2d 520, 527 n.2 (Ind. 2005). In Smylie v. State, the Indiana Supreme Court held that Blakely was applicable to Indiana's sentencing scheme and required that "the sort of facts envisioned by Blakely as necessitating a jury finding must be found by a jury under Indiana's existing sentencing laws." 823 N.E.2d 679, 686 (Ind. 2005), cert. denied, 126 S. Ct. 545 (2005). The Indiana Supreme Court later noted that "Blakely and the later case United States v. Booker[, 543 U.S. 220, 125 S. Ct. 738, 756 (2005),] indicate that there are at least four ways that meet the procedural requirements of the Sixth Amendment in which such facts can be found and used by a court in enhancing a sentence." Mask v. State, 829 N.E.2d 932, 936 (Ind. 2005).

> [A]n aggravating circumstance is proper for Blakely purposes when it is: 1) a fact of prior conviction; 2) found by a jury beyond a reasonable doubt; 3) admitted to by a defendant; or 4) stipulated to by the defendant, or found by a judge after the defendant consents to judicial fact-finding, during the course of a guilty plea in which the defendant has waived his Apprendi rights.

Id. at 936-937 (citing Trusley v. State, 829 N.E.2d 923, 925 (Ind. 2005)).

According to Cameron, the aggravator that "Cameron had violated conditions of bail and had his bail revoked, was not submitted to a jury, and should not have been considered as an aggravator for that reason." Appellant's Brief at 7. Even assuming, without deciding, that this aggravator violated Blakely, we conclude that the remaining aggravator adequately supports Cameron's sentence. "In a case where a trial court has relied on some Blakely-permissible aggravators and others that are not Blakely-permissible, the 'sentence may still be upheld if there are other valid aggravating factors from which we can discern that the trial court would have imposed the same sentence.'" Sullivan v. State, 836 N.E.2d 1031, 1037 (Ind. Ct. App. 2005) (quoting Edwards v. State, 822 N.E.2d 1106, 1110 (Ind. Ct. App. 2005)).

Here, the trial court also found that Cameron had violated a position of trust as an aggravating circumstance. The trial court specifically stated that "each aggravating factor, standing alone, in and of themselves, outweigh any mitigating factor." Appellant's Appendix at 95. At the sentencing hearing, the trial court stated:

> Aggravating factors. You have that prior conviction back in the '70s, which once again we're talking about maybe 30 years ago. But you did, in fact, violate a position of trust. This is a significant aggravating factor. You served as this child's stepfather. I absolutely find, which I believe to be consistent with Indiana case law, while working as her stepfather, living in the same household, you had the care and custody of this child and you absolutely violated a position of trust that she had in you. I do not believe that I would be in error in finding this to be a significant aggravating factor in this case.

> I with [sic] also note that while you were on bail, you found yourself arrested and your bail was revoked. A subsequent charge was filed against you for invasion of privacy.
>
> * * * * *
>
> To some extent, I believe that you did engage in contact with this child, which according to evidence presented was very intimidating in nature – at least to her – which resulted in your revocation of bail, which I – even in hindsight I believe that was appropriate under the circumstances.
>
> I note it for the record, but I am unclear whether I can use that as an aggravating factor, under the sentencing statute that was in effect at the time when this offense occurred. But I note it because this is part of the total nature and circumstance of this offense.

Transcript at 631-633. Based on the trial court's sentencing statement, the trial court stressed the position of trust aggravator. "Abusing a 'position of trust' is, by itself, a valid aggravator which supports the maximum enhancement of a sentence for child molesting." Singer v. State, 674 N.E.2d 11, 14 (Ind. Ct. App. 1996). The use of this single aggravating factor is adequate to justify Cameron's enhanced sentence and we are confident that the trial court would have imposed the same sentence if it considered the proper aggravating and mitigating circumstances. See, e.g., Middlebrook v. State, 593 N.E.2d 212, 214 (Ind. Ct. App. 1992) (holding that a position of trust by itself constitutes a valid aggravating factor upon which the trial court could properly enhance the defendant's sentence).

II.

The next issue is whether the trial court abused its discretion in sentencing Cameron. Sentencing decisions rest within the discretion of the trial court and are

reviewed on appeal only for an abuse of discretion. Smallwood v. State, 773 N.E.2d 259, 263 (Ind. 2002). An abuse of discretion occurs if "the decision is clearly against the logic and effect of the facts and circumstances." Pierce v. State, 705 N.E.2d 173, 175 (Ind. 1998). In order for a trial court to impose an enhanced sentence, it must: (1) identify the significant aggravating factors and mitigating factors; (2) relate the specific facts and reasons that the court found to those aggravators and mitigators; and (3) demonstrate that the court has balanced the aggravators with the mitigators. Veal v. State, 784 N.E.2d 490, 494 (Ind. 2003).

We frequently hold that a single aggravating circumstance may be sufficient to support the imposition of an enhanced sentence. Deane v. State, 759 N.E.2d 201, 205 (Ind. 2001); see also Battles v. State, 688 N.E.2d 1230, 1235 (Ind. 1997) (holding that "a criminal history suffices by itself to support an enhanced sentence"). Even when a trial court improperly applies an aggravator, a sentence enhancement may be upheld if other valid aggravators exist. Pickens v. State, 767 N.E.2d 530, 535 (Ind. 2002). "[W]e will remand for resentencing if we cannot say with confidence that the trial court would have imposed the same sentence if it considered the proper aggravating and mitigating circumstances." Id. The Indiana Supreme Court has held that this "does not mean that any single aggravator will suffice in all situations." Deane, 759 N.E.2d at 205. For example, a "non-violent misdemeanor ten years in the past . . . would hardly warrant adding ten or twenty years to the standard sentence." Id.

Cameron argues that the trial court's citation to "the sexual nature of the molestation against the victim" as a sentencing consideration is improper. Appellant's Brief at 8. Initially, we note that the trial court did not list the sexual nature of the molestation under the "***AGGRAVATING CIRCUMSTANCES***" section of its sentencing order or in its sentencing statement. Appellant's Appendix at 94. Moreover, we need not address the merits of Cameron's argument because even where the trial court considers an improper aggravator in imposing a sentence, the sentence may be affirmed if a legitimate aggravator otherwise supports it. Powell v. State, 751 N.E.2d 311, 317 (Ind. Ct. App. 2001). As previously mentioned, the use of the position of trust aggravating circumstance is adequate to justify Cameron's enhanced sentence. See supra Part I. Accordingly, we conclude that the trial court did not abuse its discretion in sentencing Cameron. See, e.g., Garrett v. State, 714 N.E.2d 618, 623 (Ind. 1999) (holding that the trial court did not abuse its discretion because, even though trial court erred in finding one improper aggravating circumstance, other valid aggravating circumstances remained).

III.

The next issue is whether Cameron's sentence is inappropriate in light of the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B) provides that we "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, [we find] that the sentence is inappropriate in light of the nature of the offense and the character of the offender." Under this rule, the burden is on the defendant

to persuade the appellate court that his or her sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006).

Our review of the nature of the offense reveals that Cameron repeatedly rubbed his stepdaughter's vagina when she was between the ages of five and seven and asked her how that felt. Cameron repeatedly engaged in vaginal and anal intercourse with D.A. When D.A. was about eight or nine years old, Cameron began having sexual intercourse with D.A. in a more aggressive manner. On one occasion, Cameron put a pillow over D.A.'s head as D.A. screamed while he engaged in anal intercourse with D.A. and talked on the phone with D.A.'s mother. When D.A. wanted to go and ride her bike, she would ask Cameron to get her bike down from a hook in the garage, and Cameron would force her to have sex on one of his cars first. The sexual intercourse resulted in D.A.'s pregnancy. When D.A. told Cameron that she was pregnant, Cameron told D.A. that he could probably take her to get an abortion. D.A. gave birth to a stillborn baby when she was twelve years old.

Our review of the character of the offender reveals that Cameron has an adult conviction for armed robbery in 1974. Cameron has pending charges of intimidation and invasion of privacy. Cameron violated a position of trust with his stepdaughter by molesting and engaging in sexual intercourse with her from the time she was five years old until she was about twelve years old. Cameron told D.A. not to tell anyone because he would be in trouble and go to jail. Cameron told D.A. that if her mother found out,

they would lose the house, her mother would have a heart attack and die, and D.A. would be homeless.

After due consideration of the trial court's decision, we cannot say that the sentence is inappropriate in light of the nature of the offense and the character of the offender. See, e.g., Leffingwell v. State, 810 N.E.2d 369, 372 (Ind. Ct. App. 2004) (concluding that the defendant's sentence was not inappropriate); Haddock v. State, 800 N.E.2d 242, 248 (Ind. Ct. App. 2003) (holding that defendant's sentence of 326 years for numerous convictions, including child molesting, was not inappropriate).

For the foregoing reasons, we affirm Cameron's sentence for two counts of child molesting as class A felonies and one count of child molesting as a class C felony.

Affirmed.

SULLIVAN, J. and CRONE, J. concur